

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**FRANCISCO JAVIER CRUZ-GUZMAN,**

**Defendant.**

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**Case No. 8:06CR-389**

**REPORT AND RECOMMENDATION**

This matter is before the court on the motion of defendant Francisco Javier Cruz-Guzman to suppress (Filing No. 47). The court, by Order (Filing No. 50), established an evidentiary hearing for March 23, 2007 on the Motion to Suppress (Filing No. 47). Cruz-Guzman was released on conditions of release (Filing No. 13).

On March 19, 2007, Cruz-Guzman requested a change of plea hearing and on March 19, 2007 the Court set (Filing No. 56), a change of plea hearing for April 17, 2007. On April 17, 2007 Cruz-Guzman failed to appear. On May 23, 2007, a superseding indictment (Filing No. 58) was returned naming Cruz-Guzman and an arrest warrant was issued. Cruz-Guzman remains a fugitive.

There is no reason to consider Cruz-Guzman's motion to suppress while he remains a fugitive. Essentially, Cruz-Guzman has abandoned his motion to suppress under the fugitive disentitlement doctrine. See *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970); *Wayne v. Wyrick*, 646 F.2d 1268, 1270 (8th Cir. 1981). It is recommended Cruz-Guzman's motion to suppress be denied without prejudice to reassertion should he again subject himself to the jurisdiction of this court.

**IT IS RECOMMENDED** to Judge Laurie Smith Camp that Francisco Javier Cruz-Guzman's Motion to Suppress (Filing No. 47) be denied without prejudice.

**ADMONITION**

Pursuant to NECrimR 57.3, a party may object to this Report and Recommendation by filing a "Statement of Objection to Magistrate Judge's Recommendation" within ten (10) business days after being served with the recommendation. The statement of objection shall specify those portions of the recommendation to which the party objects and the basis of the objection. The objecting party shall file contemporaneously with the statement of objection a brief setting forth the party's arguments that the magistrate judge's recommendation should be ***reviewed de novo*** and a different disposition made.

Dated this 19<sup>th</sup> day of November 2008.

BY THE COURT:

S/ F. A. Gossett  
United States Magistrate Judge